

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mia Minnelli

Attorney Docket No.: Mia Minnelli

US Patent: 6,263,884

Filed: July 24, 2001

**RESPONSE TO REQUEST FOR INFORMATION**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the REQUEST FOR INFORMATION document mailed on October 4, 2012, Petitioner appreciates the opportunity to supplement the record regarding Petitioner's request for reconsideration for showing of unavoidable delay to pay maintenance fees. We respectfully request reconsideration of the petition decision and request the petition be granted to reinstate US Patent 6,263,884. Furthermore, we respectfully request the Director accept the payment of the maintenance fee since the delay was unavoidable and the record includes sufficient evidence to show that the delay was unavoidable and due to serious health issues.

**I. Steps in Place to Ensure the Maintenance Fee Would be Timely Paid**

As requested, please see relevant portions of the database attached identified as Exhibit 1. This is a portion of a Microsoft Excel Spreadsheet the Petitioner created. The Petitioner is unable to locate a calendar with the due date.

## II. The Failure to Timely Submit the 7.5 Year Maintenance Fee

Petitioner is alleging the 7.5 year maintenance fee would have been timely paid but for the Petitioner's health problems no later than July 24, 2009 ("D-Date"). Please note it is difficult and somewhat unreasonable to ask the Petitioner to provide the date ("D-Date") she would have paid the maintenance fees but for her health problems, as this is speculation since the Petitioner had and currently has health problems. However, since requested, we speculate the Petitioner would have paid the maintenance fees by the last date of the surcharge period, July 24, 2009 as provided by the USPTO rules and federal laws since the Petitioner had no intention of abandoning the patent at hand. It should be noted that the patent at issue is the main product that the company sells, the Tonytail® ponytail holder, and the name of the corporation, The Tonytail Company, Inc. Petitioner would never intentionally avoid paying the maintenance fees of this patent as the patent is vital to the company's existence.

The USPTO states that the request for reconsideration only identified one health problem (getting pregnant) relevant to the time period during which the 7.5 year maintenance fee could have been timely paid. We respectfully disagree. Although Petitioner was not diagnosed with having three (3) brain tumors until December 2009, this ailment is still relevant to the time period during which the 7.5 year maintenance fee could have been timely paid. Although Petitioner was not formally diagnosed with the tumors until December 2009, the tumors were present when Petitioner was undergoing fertility treatment as well as when Petitioner was pregnant in August, 2009 and later suffered a miscarriage. At the time of the miscarriage, the Petitioner was four months pregnant. The miscarriage was devastating to Petitioner to not only lose a child but Petitioner had to have a scheduled surgery to remove the dead fetus from her body. This traumatic event caused the Petitioner to withdraw from her work and become depressed. The combination of the stress, depression and pressure to conceive a child and the pain and

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pressure in Petitioner's head due to the tumors impacted Petitioner's ability to consult her calendar and database, her ability to recognize the 7.5 maintenance fees were due, and Petitioner's ability to timely pay the 7.5 year maintenance fee. Petitioner suffered from and continues to suffer from headaches, fatigue, behavioral and cognitive (thinking) changes and hormone changes. These ailments and symptoms significantly impacted Petitioner's ability to consult the database, recognize the 7.5 year maintenance fee was due and her ability to pay the fee. Petitioner was unable to view the database because the database was stored on her work computer and Petitioner was home between the middle of 2008 to early 2009 when Petitioner expressed an interest in having a second child. Although Petitioner had a successful high-risk pregnancy delivering her son in 2008, Petitioner was aware of the risks associated with pregnancy including pregnancy loss, preterm delivery and birth and small and low birth weight babies, as identified in the previously attached November 10, 2010 letter from OB-GYN Specialists. Petitioner did not have the ability to recognize that the 7.5 year maintenance fee was due. A recent review by the Firm of the spreadsheet Petitioner used to track her intellectual property revealed that the 7.5 year maintenance due date was not calculated in the excel spreadsheet. The next due date shown by the spreadsheet that fees were due for this patent is January 24, 2013. When Petitioner retained the Firm to handle her intellectual property, she was informed of the date that the fees were due and we proceeded with filing this reinstatement. An imbalance in hormones, stress, depression and anxiety coupled with the tumors decreased Petitioner's cognitive function and her ability to recognize that the 7.5 maintenance fee was due. Lastly, Petitioner's problems getting pregnant coupled with three tumors impacted her ability to timely pay the 7.5 year maintenance fee. First, Petitioner was unaware the fees were due. Second, Petitioner was home during this time period and bills were paid by her husband. Petitioner was notified of outstanding bills and their deadlines based on invoices received during this time period. The invoices were paid by her husband, as Petitioner did not have the ability to pay fees owed due to excruciating head pains, painful headaches, stress, depression,

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anxiety, and imbalanced hormones. Neither the USPTO nor other third parties sent an invoice to Petitioner to be paid. Petitioner did not have the ability to timely pay the 7.5 year maintenance fee as she was home on bed rest and in and out of doctor's offices for numerous neurological treatments located 30 miles away in at UCSF Medical Center in San Francisco and she had constant excruciating headaches and pains in her head making her unable to timely pay the 7.5 year maintenance fee.

Petitioner had fertility treatments in June 2008 and continued with fertility treatments during March 2009. We respectfully request that the USPTO also consider these treatments and Petitioner's three tumors. Petitioner currently has three tumors. If they are removed, they can result in the Petitioner's death. One large inoperable tumor (a schwannoma) which is extremely rare and the doctors continued to monitor it over time to determine whether or not it is malignant and make future decisions as how to treat it. It is the size of a lemon and is wrapped around the Vagus nerve making it very hard for Ms. Minnelli to talk for more than ten minutes at a time. Schwannomas are very homogeneous tumors, consisting only of Schwann cells. The tumor cells are wrapped around and growing within the nerves making them inoperable. If removed, this large tumor will cause the death of Petitioner. Schwannomas are relatively slow growing and they are extremely painful. Fertility treatments coupled with the pain from the tumors impacted Petitioner's ability to consult the database. Again, during the treatments Petitioner was home since she was told by her physicians to be in a non-stressful environment due to the high risk pregnancy and tumors. The database was only retrievable on Petitioner's work computer in the office, as discussed above. Next, the treatments coupled with Petitioner's tumors impacted her ability to recognize the 7.5 maintenance fee was due. An imbalance in hormones coupled with the pain and stress of the tumors decreased Petitioner's cognitive function and her ability to recognize that the 7.5 maintenance fee was due. Similarly, fertility treatments coupled with having the tumors impacted Petitioner's ability to timely pay the 7.5 maintenance fee since Petitioner was also suffering from hot flashes, headaches, nausea, and mood swings.

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Petitioner did not have the ability to timely pay the 7.5 year maintenance fee as she was home on bed rest and in and out of doctor's offices for neurological treatments and she had constant excruciating headaches and pains in her head making her unable to timely pay the 7.5 year maintenance fee.

Petitioner's health problems including problems getting pregnant, having a high risk pregnancy, having a miscarriage (baby dying intrawomb at 4 months pregnant) and suffering with tumors limited her ability to perform her job duties during the entire time period. Although it appears that the USPTO has created a timeline of specific events as identified in the Background section of the Request for Information document, it does not appear that the USPTO is considering the physical, mental and emotional strain these ailments caused Petitioner. Please see Exhibit 2 which illustrates a timeline of events that affected the Petitioner timely paying the 7.5 year maintenance fee. It was extremely difficult for Petitioner to complete day to day tasks worrying about her life and also yearning to have a healthy baby. Failed attempts to conceive a child caused increased emotional stress for Petitioner. The extensive fertility treatments Petitioner received required Petitioner to visit doctors 3-5 days per week. Commuting to the doctor and receiving treatments limited Petitioner's ability to perform her job function since she rested at home in between treatments and tried to relax and not worry about having a high risk pregnancy. Petitioner suffered a the death of her baby inside the womb at 4 months pregnant (i.e., miscarriage) and had to have it surgically removed in November 2009. The feeling of losing a baby is indescribable and no one can share the heartache of a mother but herself. It is extremely difficult to get over a miscarriage of this extreme type. Petitioner's miscarriage was especially traumatic since the 4 month old fetus had to be surgically removed from the Petitioner. Petitioner became very depressed and stressed about the miscarriage. This limited Petitioner's ability to perform her job duties. Lastly, tumors cause severe headaches and inhibit Petitioner's ability to focus for periods of time. The tumors limited her ability to perform her job duties because the pain made it difficult to focus on tasks and caused the temporary loss of Petitioners eyesight.

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Petitioner is a mother, wife and business owner who lived with the fear that she could succumb to the tumors during the time period at hand. Naturally, this fear limited Petitioners duties to perform her job since her concentration, focus and attention were on her health and livelihood/well-being.

We note that the USPTO has asked how Petitioner's health problems limited her ability to perform job duties "during the entire relevant time period." However, we note that the USPTO affords a surcharge to pay maintenance fees which was between January 2009 and July 2009. Had Petitioner not been ill, Petitioner would have paid the fees by the July 2009 deadline. However, between March 2009 and August 2009, Petitioner attempted fertility treatments and suffered from pains due to the tumors, along with the emotional, physical, and mental anguish of the treatments and getting pregnant. Her focus and attention was turned to her health during the relevant time period.

The USPTO notes that the request for reconsideration fails to identify a single day that Petitioner missed work as a result of health problems during the time period beginning on the date two weeks prior to the D-Date and ending on the last date the 7.5 year maintenance fee could have been timely paid. The D-Date and the last date the 7.5 year maintenance fee could have been timely paid are the same date, July 24, 2009. Two weeks prior to the D-Date and the last date of the 7.5 year maintenance fee, Petitioner missed work during the two week period while undergoing fertility treatments in her doctor's office and resting at home, as instructed by the doctor. Petitioner became pregnant in August 2009, but it is likely Petitioner was pregnant in July 2009 and it was too early to be detected by doctors. Petitioner was constantly reminded of the 4 month old fetus surgically removed. She was put on bed rest due to the history of miscarriages and high-risk pregnancy.

The USPTO notes that the Petition language strongly implies that Petitioner handled the company's finances during the time period the 7.5 year fee could have been timely paid.

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We respectfully disagree that the language implies this. Petitioner did not handle the finances during the period two weeks prior to July 2009. As mentioned above, Petitioner's husband paid Petitioner's bills during this time period. He knew to pay the bills since Petitioner received invoices with balances owed through the United States Postal Service. The USPTO nor a third party sent an invoice to Petitioner regarding the maintenance fees owed. Furthermore, the USPTO nor third parties sent a notice that a balance was owed after the July 2009 date. Petitioner's husband would not have known to pay the maintenance fees for the patent at issue. Petitioner did not pay any bills and invoices timely during the period two weeks prior to the July 2009 date. Petitioner does not recall having any bills and invoices which were not timely made by Petitioner during the period two weeks prior to the D-Date and the last date the 7.5 fee could be paid. If any bills or invoices were outstanding, Petitioner would have received a reminder from the service provider reminding Petitioner of the fees owed. Petitioner was instructed by her doctors to not be a part of any major decision making due to the inability to think clearly due to health problems.

The USPTO request the extent to which Petitioner's health problems impacted her ability to attend business meetings, give speeches and travel. As discussed above, Petitioner's health problems limited her ability to perform job duties including attending business meetings, speeches and traveling. Petitioner does not recall attending meetings, giving speeches or extensive traveling prior to the last date the 7.5 year fee could have been timely paid. The Petitioner traveled to and from doctor's offices in March 2009 for fertility treatments, which is prior to the July 2009 date. Due to the health problems discussed, Petitioner did not attend meetings, speaking engagements, and travel to focus on her health, livelihood and well-being. One of Petitioner's tumors is the size of a lemon and is wrapped around the Vagus nerve making it very hard for Petitioner to talk for more than ten minutes at a time. Continuous strain on her vocal chords may exacerbate the tumor and could potentially damage her vocal chords permanently. During this time period, Petitioner stayed close to home as she was too worried about her life.

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The USPTO notes that other employees at Tonytail were not qualified to handle the company's finances or intellectual property. Furthermore, the employees were not privy to Petitioner's database which was on Petitioner's computer. Petitioner's database is an excel spreadsheet she created. First, even if Petitioner asked an employee to check the database to see if any fees were due, it is unlikely that the employees would know where to look or even know how to interpret the data on the database since their duties did not involve anything remotely related to finances or intellectual property. Petitioner's ailing health would not afford her the ability to teach an employee to do this while she was not at work. Secondly, Petitioner would not ask an employee to use her computer since her computer houses information that is confidential to Petitioner and Petitioner's company, including at least trade secrets and confidential business practices. Petitioner would not risk this confidential information becoming public or viewed by a third party not privy to this information.

III. The Period of Delay from July 25, 2009 to October 31, 2009

The USPTO notes that the record fails to identify any steps taken by Petitioner during the time period beginning July 25, 2009 and ending March 31, 2010 to determine if any prior deadlines had been missed. During this time period, Petitioner did not review the database to determine if any deadlines had been missed since starting March 2009 she began receiving fertility treatments and as discussed above she was not in the office to focus on her health and focus on conceiving a healthy child. From March 2009 to August 2009, Petitioner received fertility treatments. From August 2009 to November 2009, Petitioner was not in the office as she was instructed to not be under any additional stress since she was expecting a baby. In November 2009, Petitioner experienced a miscarriage where the four month old fetus was surgically removed. Petitioner's mental and physical state were such that they limited her ability to take steps to determine if she had missed any deadlines. Petitioner focused on her health and well-being and was recovering from the miscarriage and suffering



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from the tumors. Thus, Petitioner's health during July 25, 2009 to October 31, 2009 limited her ability to take steps to determine if she had missed any past deadlines due to health problems.

IV. The Period of Delay from November 2009 to March 31 2010

The USPTO requests Petitioner address the impact the death of her baby at 4 months pregnancy /miscarriage had on Petitioner's ability to take steps to determine if she had missed any past deadlines due to her health problems. Between November 2009 and March 2010, Petitioner did not take any steps to determine if she had missed any past deadlines due to her health problems. Rather, during this time period Petitioner became very depressed and stressed about the miscarriage and focused on healing physically and mentally. As mentioned above, the miscarriage was extremely traumatic for Petitioner since most miscarriages occur during the first three months. The fetus was so large at four months that the Petitioner had emergency surgery to remove the fetus. Again, as mentioned above, Petitioner typically receives reminders from service providers requiring any specific deadline, and Petitioner does not recall receiving any communications stating she had missed any deadlines so Petitioner assumes she did not miss any deadlines. Petitioner did not receive any reminders or notifications of a deadline from the USPTO or others regarding the maintenance fee being due. The miscarriage and the physical and emotional healing and recovery prevented Petitioner from taking steps during these months to determine if she had missed any past deadlines due to health problems. Petitioner's priority during this time was to heal emotionally and physically from the miscarriage and to also suffer through the pains in her head due to the tumors present.

V. The Period of Delay from April 2010 to January 22, 2012

The USPTO request the Petitioner identify the extent to which she took steps to determine if she missed any deadlines due to health problems and the extent to which Petitioner's health problems prevented her from taking steps during the month to determine if she had missed any past deadlines due to health problems.

Petitioner was diagnosed with brain tumors during December 2009. In June 2010, one of the tumors was removed. Currently, Petitioner has three tumors that if removed, could take Petitioner's life. Petitioner took off until about January 2011 to recover from the removal of the tumor. While off and recovering, Petitioner did not take any steps to determine if she had missed any past deadlines since her ailment prevented her from returning to work to review the database. This review was unavoidable. Also, the severity of the surgery, operating on Petitioner's brain, required Petitioner take time to heal, relax, and recover. Between January 2011 and January 22, 2012, the Petitioner returned to work but because of state of her health and pain from the tumors, one the size of a lemon and wrapped around the Vagus nerve, she continued to have painful headaches and emotional stress knowing she is living with three tumors. During January 2011 to December 2011, she focused on her day to day workload. In December of 2011, Petitioner reviewed her spreadsheet and identified January 24, 2013 as the date the maintenance fees were due. After reviewing the spreadsheet, Petitioner recognized that she needed to continue to limit her duties and retain an IP Firm to handle the Firm's patent portfolio. In January 2012, Petitioner engaged The Law Firm of Andrea Hence Evans, LLC who informed her that the patent had expired due to the lack of payment of the 7.5 year maintenance fee. Petitioner immediately authorized the Firm to proceed with reviving the patent as she did not intend to let the patent abandon and due to her health issues the delay in payment was unavoidable. Petitioner would never intentionally avoid paying the maintenance fees of the patent at issue.

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Since the delay in paying the maintenance fees was unavoidable, we respectfully request the patent be reinstated. The Petitioner has shown the steps taken to ensure timely payment of the maintenance fee and the Petition was filed promptly after the Petitioner was aware the fees were due. Based on the Petitioner's extenuating health conditions during the period when the 7.5 year maintenance fees were due, we request that the USPTO not penalize the Petitioner for her ailments which caused the delay in paying the necessary fees. Should the USPTO require any additional information, please contact the undersigned.

Patent No. 6263884

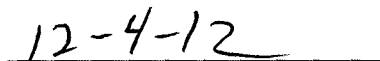
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VERIFICATION

I solemnly affirm under the penalties of perjury that the contents of this Request are true and correct to the best of my knowledge, information and belief.



Signature



Date

Mia Minnelli

Respectfully Submitted,

By /Andrea H. Evans, Esq./

Andrea H. Evans

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The Law Firm of Andrea Hence Evans, LLC

Date: December 4, 2012

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# **EXHIBIT 1**

PATENTS								
Patents Description	Application Number	Class	Patent Number	Date of Patent	Term	PCT Filing	Other Countries Patent Number	Maintenance Fees Due Dates
								3.5 year 7.5 year 11.5 year
Device for Binding a Ponytail w Natural Hair appearance	09/525,601	A41G 5/100	6,253,884 B1	7/24/2001	17 years			1/24/2005 1/24/2011
Ponytail Holder	25/136,364	28-03	D453,239 S	1/29/2002	14 years			N/A for design patents
Hair Ponytail Band	29/088,566	28-03	D413,683	9/7/1999	14 years			N/A for design patents
Headband	25/139,366	28-03	D453,053 S	1/22/2002	14 years			N/A for design patents
Self Concealing System for Providing & Enhanced, Elevated & Fuller Ponytail	10/394,124	A41G 3/00	7,917,585 B1	3/28/2006	17 years	PCT/US2005/039564	6728364 B	9/28/2009 9/28/2013 9/28/2017
French Twister	29/231,335	28-03	D582,095 S	12/8/2008	14 years			N/A for design patents
Scarf with integral headband	11/412604							

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**EXHIBIT 2**

January 2007 – Petitioner started fertility treatments

February 2007 – Petitioner was diagnosed with hypothyroidism which is attributable to one of her brain tumors.

June 2007- Petitioner became pregnant.

March 2008- Petitioner gave birth to baby.

June 2008 – Petitioner started fertility treatments.

June 2008-Petitioner began undergoing treatment to determine the cause of the head pains and severe headaches \*

*July 2008-January 2009 7.5 year maintenance fees due*

March 2009 – Petitioner continued with fertility treatments.

*January 2009 – July 2009 7.5 year maintenance fees due with surcharge*

August 2009 –Petitioner became pregnant with pregnancy #2.

November 2009 – Petitioner suffered miscarriage at 4 months along. Surgery was required to remove fetus.

\*December 2009 – Petitioner was diagnosed with 3 brain tumors.

June 2010 – Petitioner had surgery to remove one brain tumor.

July 2010 – Petitioner started fertility treatments again.

August 2010 – Petitioner was diagnosed with 4<sup>th</sup> brain tumor. Petitioner currently has 3 brain tumors which if removed could take her life.

September 2010 – Petitioner became pregnant with pregnancy #3.

June 2011 – Petitioner gave birth to baby #2.

January 2012 – Learned the Patent was Abandoned

January 2012- Filed Petition to Reinstate/Revive Patent